



Virginia
Regulatory
Town Hall

Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	Department of Mines, Minerals, and Energy
VAC Chapter Number:	4 VAC 25-20
Regulation Title:	Board of Coal Mine Examiners Certification Requirements
Action Title:	Periodic Review-Pre-NOIRA
Date:	December 28, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

The Board of Coal Mine Examiners Certification Requirements regulation, 4 VAC 25-20 establishes rules that the Board of Coal Mine Examiners use to ensure that miners are trained and certified to safely perform the duties and responsibilities that come with working on surface and in underground coal mines.

The certification requirements for coal miners ensure that miners are certified to perform specialized tasks required to mine coal at coal mines. These requirements address application and examination requirements, reciprocity between states, continuing education, specialized certification requirements that are designated for positions with responsibilities underground and

at surface mines, blasters, shot firers, electricians, hoisting engineers, foremen, inspectors, mechanics, first aid and first aid instructors, surface facilities, elevator operators, gas detection, general coal miners, BCME instructors, and on-site examination requirements.

This review is pursuant to Executive Order 25(98) and is being conducted to determine if these regulations should be terminated, amended, or retained in their current form.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Board of Coal Mine Examiners (BCME) derives its authority to promulgate this regulation from Virginia Code Sections 45.1-161.28, 45.1-161.29, and 45.1-161.34.

Section 45.1-161.28, The BCME shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 of the Administrative Process Act.

Section 45.1-161.29, Examinations Required for Coal Mining Certifications, The Board of Coal Mine Examiners may require examination of applicants for certification but shall require certification of mine inspectors. Also, the Board may require additional information as may be necessary to determine the competency and qualifications of candidates. The section requires qualifications for any certification and rules, conditions, and regulations for examinations.

Sections 45.1-161.34, Continuing education requirements, The BCME shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The regulation was opened for public comment by the department on September 10, 2001. The DMME asked for comments regarding the essential need of the regulations to protect the health, safety, or welfare of citizens or for the efficient and economical importance of an important government function. No public comments were received.

The department convened the Virginia Coal Mine Safety Board (VCMSB) as the regulatory work group to review the regulation after the end of the public comment period. This review was considered by the Board of Coal Mine Examiners prior to concluding any amendments to the regulation. The VCMSB will be the work group used to review the regulation during the formal promulgation of the regulation.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals of the Board of Coal Mine Examiners Certification Requirements, 4 VAC 25-20 is to ensure that miners are certified and perform tasks required to mine coal safely and knowledgeably. In addition, the regulation aims to provide for the health and safety of persons and property on or near the mines, to provide a pool of qualified mining employees available to safely perform work at mine sites, and to encourage productive coal mines.

These goals are effective in that well trained mine employees who are qualified to safely perform their duties at coal mines result in reduced lost time accidents, reduced employer costs, healthier employees and families, and generally are more productive.

The regulation as reviewed by the VCMSB and the BCME is found to be clearly written and understandable by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

Specific alternatives to the existing regulation were considered as part of the periodic review process.

An alternative to mailing completion requirement and deadline notices to certificate holders was considered. The recommendation to not mail notices was proposed and accepted by the work committee. The reason was that in more instances than not, miners tend to be fairly transient and do not usually leave a forwarding address. Because of this, many hundreds of notification mailings are returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed with the alternative that the operators and the DMME would benefit if they made information on suspended or revoked certifications available on a requested

basis to interested parties. The maintenance of certifications would be left to the responsible individuals.

The workgroup considered as an alternative to re-taking complete examinations, that a miner only be required to have to retake any failed “sections” of an examination as opposed to the entire examination. The miner would take the first, second, and third segment of the exam. The sections that are failed from each segment are combined for the second retake. If the section retake is failed in the third attempt, the miner would have to retake the entire examination and could not do so until after a year from the date of the first attempt.

As an alternative to current regulatory requirements that outline reciprocal agreements, the workgroup chose to broaden the scope of the regulation to meet conditions set forth by the reciprocating party and the state of Virginia. It was decided that having broader reciprocating requirements would enable miners with specialized backgrounds the flexibility to use their skills in a wider range of locations.

Alternative measures were considered when amending the underground shot firer certification. Previously there was no requirement for re-certification of underground shot firers. The board felt that the best alternative to this was to re-certify these individuals every five years and to require proof of experience, examination, or continuing education.

Underground electrical repairman requirements alternatively would exclude performing electrical work at surface locations. This is because the responsibilities vary considerably for underground and surface electricians.

The alternative to not having to be re-certified as a hoisting engineer and have any continuing education was to have hoisting engineers be re-certified every five years and for the hoisting engineer prove that they have been performing hosting duties in their work.

Advanced first aid certification needed a clear date when the certification expired as opposed to the alternative.

In the current regulation, instructors were not required to use equipment that was necessary to teach advanced first aid. The alternative to this was to require instructors to use this equipment to help reinforce their teaching.

As an alternative to having a miner know how to just operate and monitor for mine gases, the miner would need to have a practical knowledge of mine gases. This will provide more thorough mine gas monitoring.

In the current regulation addressing general coal miner certifications, there was no clear distinction between miner job responsibilities at surface and underground mines. For clarity, it is recommended that the regulation be amended to ensure that surface miners without underground mining experience are not working underground without the required training and knowledge.

Not all instructors that teach BCME training and continuing education courses are certified in the areas they teach. In addition the students are not given the opportunity to critique the instructors teaching effectiveness. Therefore the recommended alternative is to amend the regulation to ensure the instructor is knowledgeable and able to effectively teach the required courses.

The alternative to having an inspector write out ten questions to be tested on during an on-site mine foreman examination, the inspector is to choose ten questions from a pool of questions that relate to the violations found at the mine.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

Pursuant to Executive Order Number 25 (98), the BCME and the Department of Mines, Minerals, and Energy has reviewed the Board of Coal Mine Examiners Certification Requirements and has determined that they should be amended to meet current industry needs.

Substance

Please detail any changes that would be implemented.

4 VAC 25-20-20 through 4 VAC 25-20-220, specific sections relating to the mailing and receiving of notifications to certificate holders being amended. The recommendation to not mail notices was proposed and accepted by the BCME because many miners do not usually leave a forwarding address when they move or leave a job. In many instances hundreds of notification mailings are sent, only to be returned to the department unopened. This results in wasted costs to the department and the public. The Board agreed that the operators and the DMME would benefit if they made available the information on a requested basis, leaving maintenance notices for certifications up to the responsible individuals.

4 VAC 25-20-20 E., The section is being amended to be consistent with changes in the Code of Virginia. The code does not specify any particular form of payment.

4 VAC 25-20-30 F. The section is being amended so that an applicant takes only the failed “sections” of the exam segment as opposed to the entire examination. The miner would take the first, second, and third segment of the exam. The sections that are failed from each segment are combined for the second retake. If the section retake is failed in the three attempts, the miner would then have to retake the entire examination, but could not do so until after a year from the date of the first attempt.

4 VAC 25-20-40, The section is being amended to broaden the scope of the reciprocal agreements and to meet conditions set forth by reciprocating parties and the state of Virginia. This would be for electrical repairmen, mine foremen, and for advanced first aid.

4 VAC 25-20-90, The section is being amended to re-certify underground shot firers every five years and for applicants to provide proof of experience, pass examinations, or participate in continuing education.

4 VAC 25-20-100, The section is being amended to address the differences in responsibilities between surface and underground electrical repairman. Underground electrical repairman requirements would exclude performing electrical work at surface locations.

4 VAC 25-20-140, The section is proposed to be amended to have hoisting engineers be re-certified every five years and for the hoisting engineer to prove that they have been performing hoisting duties in their work.

4 VAC 25-20-210, The section is being amended to provide a clear date when the advanced first aid certification would expire.

4 VAC 25-20-220, The section is being amended to require instructors to use equipment that is necessary to teach advanced first aid and first aid techniques.

4 VAC 25-20-250, The section is being amended for the miner to have a practical knowledge of mine gases in addition to knowing how to operate the gas monitoring equipment.

4 VAC 25-20-255, The section is being amended so there clear distinction in the skills between miners that are qualified to work at surface or underground mines.

4 VAC 25-20-259, The section is being amended to ensure that BCME instructors are knowledgeable of mines and mining and able to effectively teach continuing education and training courses.

4 VAC 25-20-390, The section is being amended to address on site investigations by mine inspectors. An inspector would choose ten questions from a pool of questions that relate to the violations found at the mine rather than randomly picking questions that would be unrelated to the violations at the mine.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their

children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulation is essential to protect workers at coal mine sites by preventing health problems, accidents and fatalities in work that is inherently dangerous. Improper conditions and actions are a significant cause of injuries and fatalities.

The regulation sets forth requirements for the certification of individuals who work at coal mine sites. A knowledgeable worker, a safe work environment and work practices reduce accidents that may result in reduced family income and increased family stress. Reducing accidents decreases these factors and has positive family impact. Ensuring that workers and operators know how to perform their jobs safely and efficiently has a generally positive effect in areas around coal mines through protection of the public health, safety and welfare. The regulation has a positive effect on family formation, stability, and autonomy.